

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 17 2006

BILLY GENE BURNEY, III,

Petitioner - Appellant,

v.

CHERYL K. PLILER, Warden,

Respondent - Appellee.

No. 05-15272

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

D.C. No. CV-00-01370-LKK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, Senior Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Billy Gene Burney, III, appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction for second

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

degree robbery with use of a firearm and second degree burglary with use of a firearm. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Burney contends that his right to due process was violated because there was insufficient evidence to support his conviction because he was not positively identified by the victim. We agree with the state court that there was sufficient evidence to support the conviction because Burney's clothing and firearm matched the description given by the victim, Burney was carrying a large amount of cash when he was arrested shortly after the crime, and the jury was shown a surveillance video of the perpetrator. *See Jackson v. Virginia*, 443 U.S. 307, 324 (1979). Accordingly the state court's decision was not contrary to or an unreasonable application of clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d) .

AFFIRMED.